

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9622 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

[illegible]

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

SOMABHAI RAMABHAI PATEL

Versus

DISTRICT COLLECTOR GANDHINAGAR

Appearance:

MR BA SURTI for Petitioner

MR BA SURTI for Respondent No. 1, 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/07/96

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed seeking the direction to quash the order dated July 31, 1993 Annexure "A" passed by the District Collector, Gandhinagar and confirmed by the State Government in appeal by order dated 16.09.1995 Annexure "B". It is alleged that, on 20th June 1993, the District Supply Officer found the petitioner carrying 18 gas cylinders in a matador No.GRW 3947. In the opinion of the District Supply Officer, the petitioner committed offence under section 3/7 of the Essential Commodities Act, having controvened the provisions of the Liquidated Petroleum Gas (Regulations of Supply and Distribution) Order, 1988 (hereinafter, for short, referred to as "the order of 1988"). The District Supply Officer seized the goods viz 18 gas cylinders and the vehicle. The D.S.O. reported the seizure of the goods and matador to the Collector, Gandhinagar in accordance with the provisions of section 6(A), Essential Commodities Act, 1959 (hereinafter referred to as 'the Act of 1959'). The Collector, on receiving the report of seizure under sub-section (1) of section 6(A), issued a notice to the petitioner under the provisions of section 6(B) as to why the seized commodities and the vehicle be not confiscated. The petitioner submitted his reply to the show cause notice stating that while coming from Ahmedabad, one civilian requested him to carry his gas cylinders in the matador. The petitioner carried the said gas cylinders on payment of Rs 200/-. He submitted that he had nothing to do with the gas cylinders. The Collector however rejected the plea of the petitioner for the reason that the petitioner in his earlier statement has stated that he had purchased these gas cylinders from the hawkers and therefore, there was an obvious contradiction in his statement. In view of this, the Collector passed an order confiscating the seized gas cylinders. So far as the confiscation of the vehicle is concerned, the learned Collector assessed the value of the matador as Rs 1,70,000/- and directed to pay 40% of the same, which comes to Rs 68,000/-. The petitioner being aggrieved by the aforesaid order of the Collector, preferred an appeal to the State Government under section-(C) of the Act of 1959. The State Government rejected the appeal of the petitioner by the order dated 16.09.1995.

2. It is contended by Mr B.A.Surti, learned counsel for the petitioner that the impugned orders are ex facie illegal and void as the order of fine to pay Rs.68,000/is in disregard to the second proviso of sub-clause (1) of section-6(A) of the Act of 1959. He has also submitted that he raised this contention before the State Government but the same has not been considered. Mr

Surti also submits that the case has also not been considered by both the lower authorities on merits in right perspective.

3. So far as the merits of the case is concerned, Miss Harsha Devani, learned A.G.P. submits that there is a finding of fact and it calls for no interference by this Court in exercise of powers under Article 226 of the Constitution of India. I have gone through the impugned orders and in my view, the findings arrived at by both the authorities calls for no interference.

4. So far as the order of fine is concerned, I have read the provisions of section-6(A) of the Act and in my view, there is an apparent error in not giving the option to the petitioner of the market price of the seized commodity i.e. 18 gas cylinders in lieu of the vehicle viz matador. Section 6 (A) of the Act reads as under :

Section - 6-A :

"(1) Confiscation of foodgrains, edible oilseeds and edible oils :- Where any essential commodities is seized in pursuance of an order made under section 3 in relation thereto, a report of such seizure shall without unreasonable delay be made to the Collector of the district or the Presidency-town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order, may order confiscation of -

- (a) the essential commodity so seized :
- (b) any package, covering or receptacle in which such essential commodity is found, and
- (c) any animal, vehicle, vessel other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action which may be taken under any other provision of

this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under section 3 in relation thereto from a produced by him, be confiscated under this section :

Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance."

5. A bare reading of second proviso shows that there is an option to the owner to pay in lieu of confiscation of vehicle, a fine not exceeding the market price at the date of seizure of the essential commodity. Thus, the provision enjoins a duty on the Collector to give option to the person before directing confiscation of such animal, vehicle, vessel or other conveyance. The order of confiscation of the vehicle without giving option is bad in law. This Court in Rajput Carriers vs State, as case reported in 1995(1) GCD 123 has upheld the contention that before directing confiscation of the vehicle, option to pay in lieu thereof should be given. Thus, in the present case, the Collector was in obvious error in imposing the penalty of fine of Rs 68,000/- in lieu of the order of confiscation of the vehicle without giving opportunity to pay fine not exceeding the market price of the goods seized.

6. In view of the aforesaid, this Special Civil Application is partly allowed and the order of imposing the fine of Rs 68,000/- is substituted by agreed figure of Rs 9,900/- as market price of the seized 18 gas cylinders at the time of seizure. The order of the Collector shall stand modified to that extent. At the time of issuing the rule, this Court granted interim relief in terms staying the execution, operation and implementation of the order dated July 31, 1993, Annexure "A" passed by the Collector and the order dated 16.09.1995 Annexure "B" passed by the State Government, on the condition that the petitioner shall deposit the sum of Rs 9,900/- with the respondent No.1 i.e. the Collector, Gandhinagar within a period of one week. Learned counsel for the petitioner submits that, in pursuance of the directions of this Court, the said

amount was deposited within the stipulated period.

8. In view of this, it is directed that the said amount shall be taken as a fine deposited under the aforesaid modified/substituted order. Rule made absolute to the aforesaid extent.

*** *** ***

parmar*